

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

RONALD P. PASSATEMPO, TRUSTEE,)	
On behalf of the Samuel Pietropaolo)	
Irrevocable Trust, SAMUEL PIETROPAOLO,)	
GRANTOR to the Samuel Pietropaolo)	
Irrevocable Trust, and PATRICIA D.)	
PIETROPAOLO, BENEFICIARY of the)	
Samuel Pietropaolo Irrevocable Trust,)	
)	
Plaintiffs,)	
)	Civil Action No.
v.)	05-10118-GAO
)	
FREDERICK V. McMENIMEN III, BARRY)	
G. ARMSTRONG, NEW ENGLAND)	
ADVISORY GROUP, LLC, 1717 CAPITAL)	
MANAGEMENT COMPANY, NATIONWIDE))	
PROVIDENT (f/k/a Provident Mutual Life)	
Insurance Company), and NATIONWIDE)	
FINANCIAL SERVICES, INC.,)	
)	
Defendants.)	
)	

**MOTION TO SUBSTITUTE EXECUTOR OF PLAINTIFF
SAMUEL PIETROPAOLO'S ESTATE AS A PARTY**

Plaintiffs Ronald P. Passatempo and Patricia D. Pietropaolo hereby move pursuant to Fed. R. Civ. P. 25(a) for substitution of the executor of Samuel Pietropaolo's ("Mr. Pietropaolo") estate as a party in this matter. As grounds therefore, Plaintiffs state that Mr. Pietropaolo, the third named Plaintiff in this matter, passed away on April 1, 2005. A Suggestion of Death was filed with the Court on April 4, 2005 (Docket No. 14). As indicated by the Appointment of Temporary Executor form attached hereto at Exhibit A (Massachusetts Probate and Family Court, Suffolk Division, No. 05P1362EP-1), Mr. Pietropaolo's son, Samuel F. Pietropaolo, was appointed as temporary executor of Mr.

Pietropaolo's estate on June 24, 2005, which appointment is to last for ninety days.

Plaintiffs expect that Samuel F. Pietropaolo will be reappointed as executor prior to or upon expiration of said ninety days. Plaintiffs further state that Mr. Pietropaolo's claims survive his death pursuant to both federal and Massachusetts common law, as they are fundamentally remedial rather than penal in nature and seek compensatory rather than punitive relief. See, e.g., Kirk v. Commissioner of Internal Revenue, 179 F.2d 619; Sheldone v. Marino, 398 Mass. 817 (1986); Lyon v. Triram Corp., 2004 Mass. Super. LEXIS 496 (Oct. 27, 2004).

In the event that one or more of the Defendants opposes the herein Motion, Plaintiffs respectfully request leave to file a memorandum of law in reply.

WHEREFORE, Plaintiffs respectfully request that Samuel F. Pietropaolo, executor of Plaintiff Samuel Pietropaolo's estate, be substituted as a party in this action pursuant to Fed. R. Civ. P. 25(a).

Respectfully submitted,

Plaintiffs RONALD P. PASSATEMPO,
TRUSTEE, On behalf of the Samuel
Pietropaolo Irrevocable Trust, SAMUEL
PIETROPAOLO, GRANTOR to the Samuel
Pietropaolo Irrevocable Trust, and
PATRICIA D. PIETROPAOLO,
BENEFICIARY of the Samuel Pietropaolo
Irrevocable Trust,

By their counsel:

/s/ David M. Burkoff
Howard M. Cooper (BBO #543842)
David M. Burkoff (BBO #657447)
Todd & Weld LLP
28 State Street
Boston, MA 02109
(617) 720-2626

Dated: June 30, 2005

Local Rule 7.1(A)(2) Certification

I hereby certify that I have conferred with defense counsel in a good faith attempt to resolve or narrow the issues presented herein.

/s/ David M. Burkoff

Exhibit A

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court (11) *EP*

Suffolk Division

Docket Number 05P1362EP-1

ESTATE OF

Samuel Pietropaolo a/k/a Sabatino Pietropaolo

APPOINTMENT OF TEMPORARY EXECUTOR

It is decreed that Samuel F. Pietropaolo
Of CARLISLE in the County of MIDDLESEX

Is appointed temporary executor / ~~executrix~~ of the estate of SAMUEL PIETROPAOLO A/K/A SABATINO PIETROPAOLO
First giving bond ~~with~~ / without surety for the due performance of said trust. This appointment shall expire
in ninety days.

6/24/05
Date

JEREMY A. STOKLIN
Justice
by John J. Gennella
Asst Reg.

SPFC - 03/2004

Suffolk, S.S. JUN 24 2005 Probat
(date)
A true copy, Certified:

Richard Dannello